APPENDIX I.

Excerpts from Constitution of Louisiana for the Year 1921, Dealing with Jurisdiction of the Three Appellate Courts of Louisiana and with Jurisdiction of the Supreme Court of Louisiana:

Article VI, Section 10, of the Constitution of 1921 of the State of Louisiana, reads as follows:

"Supervisory powers -- Original and appellate jurisdiction. -- The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

It shall have exclusive original jurisdiction in all disbarment cases involving misconduct of members of the bar, with the power to suspend or disbar under such rules as may be adopted by the court, and in suits for removal of judges of courts of record from office as elsewhere provided in this Constitution. It shall also have original jurisdiction for the determination of questions of fact affecting its own appellate jurisdiction in any case pending before it; and to that end may make such orders and decrees as it may deem proper in the premises.

It shall have appellate jurisdiction in civil suits where the amount in dispute or the fund to be distributed, irrespective of the amount therein claimed, shall exceed two thousand dollars exclusive of interest, *except in suits for damages for physical injuries to, or for the death of a person, or for other damages sustained by such person or his heirs or legal representatives, arising out of the same circumstances;* nor shall such appellate jurisdiction extend to any suit for compensation under any State or Federal Workmen's compensation law, or employer's liability act; provided, that appeals properly granted to the Supreme Court, in such excepted cases, prior to the adoption of this Constitution, shall be finally disposed of by said court.

It shall have appellate jurisdiction of all suits for divorce or separation from bed and board, and of all matters arising therein; of suits involving alimony, of suits for the nullity of marriage, for interdiction, or involving the tutorship of minors, or curatorship of interdicts, or the legitimacy, or custody of children, and of matters of adoption and emancipation.

It shall have appellate jurisdiction in all cases wherein the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the State, or by any parish, municipality, board, or subdivision of the State is contested, or where the legality, or constitutionality of any fine, forfeiture or penalty imposed by a parish, municipal, corporation, board, or subdivision of the State shall be in contest, whatever may be the amount thereof, and in all cases wherein an ordinance of a parish, municipal corporation, board, or subdivision of the State, or a law of this State has been declared unconstitutional. Its appellate jurisdiction shall also extend to all cases involving homestead exemptions irrespective of the amount involved, and the appeal on the law and the facts shall be directly from the court in which the case originated to the Supreme Court; except that in cases involving only movable property, the appeal shall lie to the court having jurisdiction of the amount or the value of the property involved.

In all civil and probate cases where the Supreme Court is given appellate jurisdiction, the appeal shall be both upon the law and the facts.

The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed." (Emphasis ours)

Article VII, section 11 of the Constitution of 1921 of the State of Louisiana reads as follows:

"Writs of certiorari or other writs to Courts of Appeal -- Judgments of Courts of Appeal -- When

executory. -- It shall be competent for the Supreme Court to require by writ of certiorari, or otherwise, any case to be certified from the Courts of Appeal to it for review, with the same power and authority in the case as if it had been carried directly by appeal to the said court; provided, that where the application is based solely upon the ground that the decision of the question of law involved is in conflict with the jurisprudence of the Supreme Court or another Court of Appeal upon a question not yet decided by the Supreme Court, and it is found that such is the fact, then the application shall be granted as a matter of right; provided, however, that the Supreme Court shall in no case exercise the power conferred by this Article unless the application shall have been made to the court or to one of the justices thereof within thirty days after a rehearing shall have been refused by the Court of Appeal; and provided further, that the judgment of the Court of Appeal shall not become executory until the expiration of thirty days; or, in cases in which application is made for the writ of review, or other writs, until the decision of the Supreme Court upon the application shall have become final."

The provision in the Constitution creating the Courts of Appeal is Article VII, Section 20, of the Constitution of 1921 of the State of Louisiana, which reads as follows:

"Courts of Appeal, circuits and districts. -- Exclusive of the parishes from which appeals are returnable to the Court of Appeal for the parish of Orleans, the State shall be divided into two circuits, to be subdivided into districts as hereinafter provided.

Until otherwise provided by law, the parishes of East Baton Rouge, West Baton Rouge, Livingston, Tangibahoa, Washington, St. Helena, Pointe Coupee, Iberville, St. Mary, Terrebonne, Assumption, Lafourche, Ascension, Calcasieu, Allen, Beauregard, Jefferson Davis, Cameron, Vermilion, Lafayette, Iberia, St. Martin, St. Tammany, Acadia, East Feliciana, West Feliciana, St. Landry, Evangeline, and Vernon shall compose the First Circuit and be known as the 'Court of Appeal, First Circuit, State of Louisiana,'

and the parishes of Caddo, Bossier, Webster, Bienville, Claiborne, Union, Lincoln, Jackson, Caldwell, Winn, Natchitoches, Sabine, DeSoto, Red River, Ouachita, Richland, Franklin, Catahoula, LaSalle, Concordia, Tensas, Madison, East Carroll, West Carroll, Morehouse, Avoyelles, Rapides and Grant shall compose the Second Circuit, and be known as the 'Court of Appeal, Second Circuit, State of Louisiana.'

The circuits above provided for, until otherwise provided by law, shall each be divided into three districts, as follows:

The parishes of Calcasieu, Allen, Beauregard, Jefferson Davis, Cameron, Vermilion, Lafayette, St. Martin, Acadia, St. Landry, Evangeline, Vernon and Iberia shall compose the first district of the first circuit.

The parishes of West Baton Rouge, Ascension, Pointe Coupee, Iberville, St. Mary, Terrebonne, Assumption and Lafourche shall compose the second district of the first circuit.

The parishes of East Baton Rouge, Livingston, Tangipahoa, St. Helena, St. Tammany, East Feliciana, West Feliciana and Washington shall compose the third district of the first circuit.

The parishes of Richland, Concordia, East Carroll, West Carroll, Franklin, Catahoula, LaSalle, Tensas, Ouachita, Madison and Morehouse shall compose the first district of the second circuit.

The parishes of Bienville, Claiborne, Jackson, Lincoln, Caldwell, Union, Bossier, Winn, Webster, and Grant shall compose the second district of the second circuit.

The parishes of Caddo, DeSoto, Natchitoches, Rapides, Sabine, Avoyelles and Red River shall compose the third district of the second circuit.

For each of the circuits there shall be elected three judges as herein provided for, one judge to be elected by the qualified electors of each district as above designated."

Article VII, Section 29 of the Constitution of 1921 of the State of Louisiana which defines the jurisdiction of the Courts of Appeal, reads as follows:

"Original and appellate and concurrent jurisdiction. -- The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, and [redacted]als shall be both upon the law and the fact[redacted]



APPENDIX II.

(a). Provisions of Louisiana Code of Practice Providing for Trial by Jury in Civil Cases.

Article 494 of the Louisiana Code of Practice provides for trial by jury. We quote that Article as follows:

> "Plaintiff requesting jury -- Causes triable without jury -- Exceptions. -- The plaintiff who wishes for a jury must pray for the same, either in his original petition, or by a supplemental petition, which must be presented before the suit be set for trial; provided, that all suits against makers and indorsers of promissory notes, drawers, indorsers and acceptors of bills of exchange, and generally all suits brought on unconditional obligations to pay a specific sum of money, shall be tried without a jury, unless the defendant shall make oath that his signature to said note, or other obligations, is not genuine, or that he expects to prove that the same had been obtained through fraud or error, or want or failure of consideration, or in cases where the defendant in his answer may set up a plea of compensation or reconvention, and make oath to the truth of all the allegations in said plea or answer."

We quote also Article 495 of the Louisiana Code of Practice with respect to the defendant's right to a trial by jury, as follows:

> "Defendant requesting jury. -- The defendant, in order to avail himself of the same privilege, must pray for a jury in his answer, or previous to the suit being set down for trial.
>
> Nevertheless, if in his answer the defendant has only declined the jurisdiction of the court, without answering to the merits, he may, if the plea be overruled, pray for a jury in his answer to the merits."

(b). Excerpt from Decision of Louisiana Supreme Court in the Case of Parish v. Holland (Holland Intervenor) 166 La. 24, 116 So. 580, Construing Provisions of Louisiana Code of Practice Providing for Trial by Jury in Civil Cases.

In the case of *Parish* v. *Holland*, (Holland, intervenor) (Louisiana Supreme Court March 12, 1928, rehearing denied April 9, 1928) 116 So. 580, 166 La. 24, the defendant in its answer prayed for a trial by jury. The Court entered an order directing that the case be tried by jury and later revoked the order. On appeal to the Supreme Court, the Supreme Court said this:

> "Articles 494 and 495, C. P., provide that the plaintiff or defendant, to avail himself of the privilege, must pray for a jury before the case is set down for trial. When this is done, in a case that may be tried by a jury, and the required cash deposit is made, and bond for jury costs is filed, the right to a trial by jury is absolute. In such cases it has been held that a trial by jury cannot be refused, even when the application is made for the purpose of delay. *Reynold's Curator* v. *Mahle*, 12 La. 425; *Frellson* v. *McDonald, and Coon*, 15 La. Ann. 536."

APPENDIX III.

Verbatim Report of Testimony from Case of Abate v. Hirdes, (La. App., 1929) 121 So. 775.

"CHRISTOPHER HIRDES, being duly sworn, testified as follows:

Direct Examination.

Mr. Deutsch:

Q. Who owns that truck? A. I do.

Q. Does the Item Company control the manner of your doing your work? A. No, sir. That is my truck; I do what I want with it.

Q. Do you permit them to control your work, or to interfere in it? A. No, sir.

Q. Are they satisfied if you show the results, regardless of the way in which you do it? A. Yes, sir.

Q. Can the Item tell you what streets to take? A. No, sir.

Q. Can they tell you what route you are supposed to use? A. No, sir.

Q. What do they tell you to do? A. They tell me to do - I go in and pay cash for my papers, and bring them out to whoever I feel like bringing them out to.

Q. Who pays for your gas and for the oil? A. I do.

Q. Who pays for the tires? A. I do.

Q. And for the repairs to the tires? A. I do.

Q. Do you use your truck on Sundays? A. Yes, sir: and nights, too.

Q. Do you use it any other time? A. Any time I feel like using it.

Q. Do you use it for your own personal needs? A. I take my family out in it.

Q. Who pays your labor? A. I pay the little boy.

Q. For whom does he work? A. For me.

Q. Does the Item tell you whom to employ and whom not to employ? A. No, sir.

Q. Can the Item Company fire that boy? A. No, sir.

Q. Is there anything to prevent you from hiring somebody else to drive the truck and do that work?

Mr. Woodville: I object to that as leading.

The Court: You might ask him what he can do. I think the question is objectionable in that form, - "Is there anything to prevent him", - calling for a question of opinion.

Mr. Deutsch:

Q. Does anybody else ever drive your truck? A. Yes, sir. I had somebody to drive it today, and every time I had to come to Court. I had to put somebody in my place to run the truck.

Q. Have you ever used that truck for anything else? A. Yes, sir: I make loads with it every chance I get.

The Court:

Q. Who selects the driver when you are not on the truck?

A. I do, myself.

Mr. Deutsch:

Q. Is there anything in your agreement with the Item, whereby you have to use that truck for that work? A. No, sir.

Q. Could you use some other truck? A. Yes, sir.

Q. Could you use a bicycle, if you wanted? A. I used one a couple of weeks ago. I had to get another to do the work with; mine was in the shop.

Cross Examination.

Mr. Woodville:

Q. What salary does the Item pay you for doing that work? A. A small salary, and commission on papers.

Q. How much is your salary? A. I get twenty dollars a week.

Q. And a commission based on the number of papers delivered by you? A. Yes, sir.

Q. You have a fixed territory in which you deliver papers? A. I can give papers to anybody I want, in any part of my territory.

Q. There is no limit to your territory? A. Yes, I have a limit to my territory.

Q. The Item pays you twenty dollars a week and a commission on the number of papers sold within a certain territory, in consideration of your delivering those papers - - A. I can sell them out of my territory, if I have a chance to. The Item cannot stop me from selling papers wherever I want to.

Q. You have no fixed territory in which to deliver? A. No, I can take papers - which I do now - I bring some back to City Park and Canal, or out Tonti Street, in the twenty five hundred block.

Q. Now, in delivering those papers, - there are two afternoon papers in the city of New Orleans, the Item and the States? A. Two evening papers, yes, sir.

Q. Both those papers, is it not a fact, come off the press, each of their editions, about the same time? A. Probably so.

Q. Well, you know that? A. Yes, sir.

Q. And every afternoon, at the time of the issuance of the various editions, there is a grand rush on the street, in the competition between the two papers, to try to get to a certain location as quickly as possible? A. No, sir, not for me.

Q. You don't care how far behind the States you get to a certain corner? A. No, sir; the idea is, I take my paters out and I have very near an hour and a half with the Pink edition, to get back with my other edition. I have an hour and a half.

Q. The success of getting rid of the papers depend on your getting the edition to a certain location as quickly as possible and quicker than the States? A. My own is mostly druggists, on that edition.

Q. The edition you were delivering on that particular occasion? A. Yes, sir.

Q. The States sends papers to those same drug stores? A. I don't know.

Q. Don't you know? A. I don't know. I have drug stores that the States is not delivered to.

Q. Have you seen States papers in the same drug stores that you deliver Items to? A. Some of them, yes, sir.

Q. You have no occasion to try to get your Items there as quickly as the States? A. I get them there as fast as I can, of course.

Q. As a matter of fact, do not the States and Item delivery trucks race through the streets, so as to beat each other to the different stations? A. The Item trucks - - -

Q. The Item and States trucks race through the streets, to beat each other to the different stations? A. I don't know about any more than my own truck.

Q. You never see them racing to beat each other to the station? A. I don't do any racing on my truck. If I ran into anybody with the truck, or break it, I have all the responsibility on myself, and all repairs I have to have done.

Q. How big a truck is that. A. A Ford one-half ton truck.

Q. How short can you stop it, going at fifteen miles an hour; within how short of a space; about six or seven feet, can't you? A. It depends on the weather. If it is any way damp, you can slip

Q. On a dry asphalt surface, one half ton truck, fifteen miles an hour, can you stop in six or seven feet, if the brakes are good? A. Yes, sir."